

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED
NOV 14 2011

CLERK, US DISTRICT COURT
NEWPORT NEWS, VA

LASHAN DENEICE JOHNSON

DEFENDANT/PETITIONER

vs

THE UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

CIVIL CASE: 4:11CV134
CRIMINAL CASE: 4:10CR111

MOTION FOR FINAL DISPOSITION

WHEREFORE, comes now Petitioner Johnson, Pro-Se whom was charged with Wire Fraud which is a violation of 18 USC 1343 and Aggravated Identity Theft in violation of 18 USC 1028A (A) (1) & (C) and was sentenced to a term of 51 months imprisonment with a Petition for 28 USC 2255 requesting this court to vacate, set aside, or correct sentence by a person in federal custody based on the recent development in the Skilling, Black, and Weyhrauch vs. United States of America cases.

The Supreme Court ruling on June 24, 2010, the " Anti-Fraud Law" 18 USC 1341, 1343, 1346 in Skilling vs. United States, Black vs. United States, and Weyhrauch vs. United States. The Supreme Court determined that the Honest Services Fraud Law, 18 USC 1341, 1343, 1346 may only be used to prosecute bribes and kickbacks.

On July, 2010 Petitioner Johnson claims the Wire Fraud Conviction under 18 USC 1343 is invalid in the light of the recent case law. These types of claims are properly brought in a motion to vacate, set aside, or correct sentence pursuant under 28 USC 2255.

The mail fraud statute, 18 USC 1341, and 1343 are treated in an identical manner. See United States vs. Slevin, 106 F. 3d 1086, 1088 (2d Cir 1996). Because these statutes 18 USC 1341, 1343, 1346 use the same relative language, they should be analyzed the same way. The charge includes the language of the cited statutes or the deprivation of the intangible right of honest services.

DEFENDANT/PETITIONER'S RESPONSE

The Petition 28 USC 2255 was originally filed on September 6, 2011.

Pursuant to policy and procedure of the Court, the Government's Answer in Opposition To Petition to Vacate, Set Aside, or Correct Sentence -60day deadline expired as of November 4, 2011. No response was received , and confirmation was received by the defendant/petitioner via telephone by Deputy Clerk Kate of the Newport News Division, and Deputy Clerk Tracy of the Norfolk Division.

The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions the accused has the right to the assistance of counsel for his/her defense. See US CONST. , Art. VI. To obtain relief on a claim of ineffective counsel under 28 USC 2255, Petitioner must prove two things; (1) deficient performance by counsel, and (2) prejudice as justice. See Strickland vs. Washington, 466 US 668, 687-688(1984). In considering whether prejudice exists, the Court, " can only grant relief under... Strickland if the result of the proceedings was fundamentally unfair or unreliable. Sexton vs. French, 163 F. 3d 874, 882 (4th Circuit 1999) (quoting Lockhart vs. Fretwell, 506 US 364, 369 (1993)).

(1) ERRONEOUS ADVICE TO INDUCE ACCEPTANCE OF PLEA AGREEMENT

a. Failure to advise defendant of change in law, Skilling vs. United States, 558 US ___, 129 S Ct. 2379, 173 L Ed 2 d 1291 (2009)

b. Counsel received case 14 days prior to sentencing. Counsel did not have adequate time to review case to provide a proper defense.

c. Defendant advised Counsel of other alias social security numbers, numerous charges not pertaining to defendant listed on the pre-sentence report. The Unit Team of the Alderson Federal Prison along with the defendant conducted research and received documentation from the Social Security Administration and various jurisdictions indicating defendant was not person of interest nor person formally charged. Charges out of Hampton/Newport News area where verified and documentation received from the Clerk of Court verifying singular charge, warranting correction on the Criminal History category of the pre-sentence report prepared by Karen Franklin of the US Probation Division.


d. Counsel acted as a mere spectator and worked against interest of defendant.

Therefore, Petitioner asks the Court :

WHEREFORE, Petitioner Johnson stands incarcerated on an non-existent alleged criminal offense 18 USC 1343 (Wire Fraud) and 18 USC 1028A (A) (1) & (C) Aggravated Identity Theft and her actual innocence of the scheme to defraud. With recent developments in the law, ineffective representation of counsel, and numerous errors, which have been exhibited in the addendum filed on October 21, 2011. Petitioner has provided substantial exhibits to satisfy evidence of the claim presented.

Petitioner Johnson clearly provided facts upon which relief should be granted.

Petitioner Johnson asks the Court grant her Petition 28 USC 2255 to immediate release from prison on a non-criminal offense and reverse her conviction to which she is entitled in the proceedings.


LaShan Johnson 11743058
Alderson Federal Prison Camp
P.O Box A
Alderson, WV 24910

CERTIFICATE OF SERVICE

This is to certify that I, LaShan D. Johnson have served a true and correct copy of the foregoing:

MOTION FOR FINAL DISPOSITION

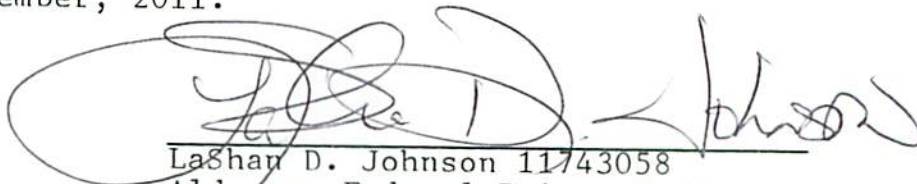
In support under 28 USC 2255 upon the following addressed, by placing same in a sealed envelope, bearing sufficient postage for the delivery via United States Mail Service to:

United States District Court, Clerk
Eastern District of Virginia
Norfolk Division

Walter E Hoffman US Federal Courthous
600 Granby Street, Room 193
Norfolk, Virginia 23510

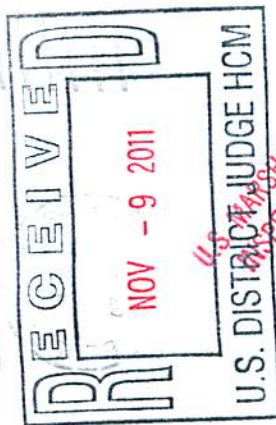
Which was hand-delivered to prison authorities at mailroom provided for inmates on the grounds of the Alderson Federal Prison Camp, Alderson, WV.

On the 7th day of November, 2011.

A handwritten signature in dark ink, appearing to read 'LaShan D. Johnson', is written over a horizontal line.

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Alderson Federal Prison Camp
PO Box A
Alderson, WV 24910
Pro-SE

Shan Johnson 11743058
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Box A (A2)
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11743-058

Judge Henry C Morgan Jr
600 Granby ST
Room 193-Judges Chambers
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